IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 362 of 1989

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VANKAR JAHABHAI SHANKERBHAI

Versus

STATE OF GUJARAT

Appearance:

MR PJ VYAS for Petitioner

MR ST MEHTA APP for Respondent No. 1

MR SV RAJU for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 11/09/2000

ORAL JUDGEMENT

This Revision is preferred by the accused Vankar Jaha Shankarbhai in Criminal Case No. 832/85 against the judgment and order dated 12th October, 1989, passed by the learned Additional Sessions Judge, Mehsana, in Criminal Appeal No. 5/89, and the judgment and order dated 20th December, 1988, passed by the learned Judicial

Magistrate, First Class, Kadi, in Criminal Case No. 832/85, convicting the petitioner for offence punishable under section 326 IPC, and the order of sentence of SI for three years and a fine of Rs.2000/-.

The complainant Chhanabhai Chaturbhai Vankar lodged a complaint to the effect that on 20th November, 1984, when the complainant was sitting with one Bhudarbhai Kalabhai in his house, the accused persons attacked the said Bhudarbhai Kalabhai the complainant and the others with lethal weapons like Dharia, stick, knife (BARCHHI) etc. and caused grievous injuries to Bhudarbhai Kalabhai, the complainant and others. Pursuant to the said complaint, Criminal Case No. 832/85 was registered against six persons in the court of the learned Judicial Magistrate, First Class, Kadi. The charge for offences punishable under sections 147, 148, 149, 326, 325, 324, 323, 504, 337 and 338 IPC and section 135 of the Bombay Police Act was framed against the accused persons. The learned trial Judge by his judgment and order dated 20th December, 1988, held the accused nos. 1, 2 and 5 guilty of charge under sections 326, 323 and 114 IPC. The accused no. 6 Shankar Ratna was given benefit of doubt and acquitted of all the charges. The accused no. 4 Kana Shankar was acquitted of all the charges as in 8 of 1990. The accused no. 3 Manabhai Ramabhai had died pending trial and the trial against him stood abated. The accused no. 5 Jaha Shankar was convicted for offences punishable under sections 326 and 114 IPC. He was sentenced with simple imprisonment for 3 years and a fine of Rs.2000/-, in default of payment of fine, further SI for 4 months was imposed. The accused no. 1 Magan Shankar was convicted of offence punishable under section 323 IPC and was sentenced with SI for one month and a fine of Rs. 100/-, in default of payment of fine, further SI for 15 days was imposed. The accused no. 2 Shakra Shankar was convicted of offence punishable under section 324 IPC and was sentenced with SI for six months and a fine of Rs.500/-, in default of payment of fine, he was further sentenced with SI for one month. Feeling aggrieved, the accused nos. 1, 2 and 5 preferred Criminal Appeal No. 5/89. The said appeal was partially allowed on 12th October, 1989 as aforesaid. The conviction and sentence of accused No.5 was confirmed. However, the accused Nos. 1 and 2 were acquitted of the charge and the order of conviction and sentence made against them was set aside. Feeling aggrieved, the complainant has preferred the present Revision.

Mr. Vyas has contended that on the date of the offence, the petitioner was aged about 40 years and has

now reached almost 60 years of age. The sentence was imposed in the month of December 1988, and 12 years have passed since then. Since the parties have compromised amongst themselves. The order of punishment requires to be quashed and set aside so as to maintain peace and harmony in the society. He has relied upon the judgment of the Hon'ble Supreme Court in the matter of SURENDRA NATH MOHANTY & ANR VS STATE OF ORISSA ({1999} 5, SCC, 238), and has submitted that similar order can be made in the present case also. In the said case, the appellants before the Supreme Court were convicted and sentenced under sections 307, 326, 325, 324 and 323 read with section 34 IPC, and were sentenced to five years' RI and the fine of Rs.2000/-, in default of payment of the fine, to undergo RI for one month. In appeal to the High Court, the conviction of the accused was altered under sections 326, 325, 324, and 323 read with section 34 IPC and were sentenced to six months' RI, and a fine of Rs. 1000/-, in default of payment of fine, to undergo RI for further three months for the offence under section 326 IPC. No separate sentence was imposed on other counts of offence. The appellants maintained that the dispute was amicably settled and the matter was compromised. The High Court ought to have granted permission to compound the offence and ought not to have convicted the appellants and imposed sentence. The court held that the offence under section 326 was not compoundable under section 320 (9) CrPC. Hence, the High Court had rightly refused to grant permission to compound the offence under section 326. However, considering the fact that the parties had settled their dispute out side the court and the fact that ten years had elapsed from the date of the incident and that the appellants had already undergone three months' imprisonment, the court thought that ends of justice would be met if the sentence of imprisonment was reduced to the period already undergone, besides, imposing a fine of Rs.5000/- on each of the accused under section 326 read with section 324 IPC. Accordingly, the order was made.

It appears that the facts of the present case are somewhat similar to the facts in the case before the Hon'ble Supreme Court. Both the learned advocates agree that the dispute amongst the parties has been amicably settled as witnessed by the compromise placed before this court. The accused has reached the age of nearly 60 years and 16 years have passed since the date of the offence. It shall, therefore, be in the interest of justice to reduce the punishment of imprisonment to the period already undergone.

Accordingly, the conviction of the petitioner under section 326 IPC is confirmed. The sentence of imprisonment is reduced to the period already undergone and a fine of Rs.5000/- shall be imposed. The petitioner has already deposited the fine of Rs.2000/- imposed by the court below. The petitioner shall deposit the remaining amount of fine with the trial court. On realisation of the fine amount, the same [i.e., Rs. 3000/=] shall be paid to the heirs of the complainant Chhanabhai Chaturbhai. [I am informed that the complainant has died pending the appeal before the lower appellate court]. In default of payment of fine, the petitioner shall undergo SI for three months.

Revision is accordingly disposed of.

[Miss R.M Doshit, J.]

JOSHI*